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NO. 802

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

KINNEAR-WEED CORPORATION, *Petitioner*

v.

HONORABLE JOE M. INGRAHAM, UNITED STATES DISTRICT JUDGE, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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NO._____

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v.

HONORABLE JOE M. INGRAHAM, UNITED STATES DISTRICT JUDGE, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review order of District Judge Joe M. Ingraham setting date for Pre-Trial Conference in Civil Action No. 63-H-509 in the United States District Court For the Southern District of Texas, Houston Division, entered August 7, 1964; Order in Case No. 21,870 of the Court of Appeals entered Sept. 10, 1964 and October 6, 1964; Orders in

Case No. 22,032 of the Court of Appeals entered November 3, 1964, November 3, 1964 and November 16, 1964. The above-referred case No. 21,870 and Case No. 22,032 arose out of Civil Action No. 63-H-509 and involve closely related questions and are requested to be heard in this petition for certiorari in accordance with Rule 23(5) of the Supreme Court Rules.

This litigation is of great public importance, as it involves Petitioner's Constitutional rights, integrity of the Federal Courts and the misconduct of Humble Oil & Refining Company, et al., defendants in Civil Action No. 63-H-509.

CITATION TO OPINIONS BELOW

United States District Judge Hon. Joe M. Ingraham up to date has refused to make written order on Petitioner's Motion and attached affidavit and certificate of Counsel incorporating legally sufficient fact allegations to disqualify said District Judge which was timely filed and duly presented to said District Judge according to law. Judge Ingraham after the service upon him of Petitioner's Motion, affidavit and Certificate of Counsel held Pre-Trial Conference September 9, 1964 as per his order of August 7, 1964, in APPENDIX A-2 hereto, infra, p. 21; Order of the Court of Appeals entered September 10, 1964 in APPENDIX C-1 hereto, infra, p. 27; Letter Order by the Court of Appeals entered September 22, 1964 in APPENDIX C-2 hereto, infra, p. 28; Order of the Court of Appeals entered October 6, 1964 in APPENDIX C-3 hereto, infra, p. 29; Order of the Court of Appeals entered November 3, 1964 in APPENDIX C-4 hereto, infra, p. 30; Order of the Court of Appeals entered

November 3, 1964 in APPENDIX C-5 hereto, infra, p. 31; Order of the Court of Appeals entered November 16, 1964 in APPENDIX C-6 hereto, infra, p. 34.

JURISDICTION

The order of the Court of Appeals was entered September 10, 1964, R. 24; p. 27, infra. Letter Order of the Court of Appeals entered September, 22, 1964, R. 65; p. 28 infra. Order of the Court of Appeals was entered October 6, 1964. R. 70, p. 29, infra. Order of the Court of Appeals was entered November 3, 1964. R. 117; p. 30, infra. Order of the Court of Appeals was entered November 3, 1964. R. 118; p. 31, infra. Order of the Court of Appeals was entered November 16, 1964. R. 122; p. 34, infra. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254 (1).

QUESTIONS PRESENTED

I

Whether writs of mandamus and prohibition should issue to direct and prevent the Hon. Joe M. Ingraham, U.S. District Judge for the Southern District of Texas from proceeding as judge in the above referred to Civil Action No. 63-H-509 in which civil action said judge did without authority usurp the jurisdiction over the subject-matter and the parties of said case.

II

Whether writs of mandamus and prohibition should issue to direct and prevent said District Judge from proceeding as Judge in the above referred to Civil Action No. 63-H-509 in which civil action timely affidavit was duly filed and pre-

sented by Petitioner to said District Judge in accordance with 28 U.S.C. Sec. 144 alleging personal bias and prejudice for defendants and against petitioner supported by sufficient fact allegations and reasons of disqualification of said District Judge showing that said District Judge pirated the jurisdiction of the case without authority from the lawful forum and jurisdiction of the Court of Hon. Allen B. Hannay, United States District Judge for the Southern District of Texas.

III

Whether writs of mandamus and prohibition should issue to direct and prevent said District Judge from further proceeding as judge in the above referred to Civil Action No. 63-H-509 out of which civil action arose related cases No. 21,870 and No. 22,032 in the United States Court of Appeals being mandamus and prohibition proceedings in which said District Judge was Respondent. He is guilty under 28 U.S.C. Sec. 144 of personal bias and prejudice for defendants and against Plaintiff-Petitioner by "*remaining silent as Respondent*" after knowledge of the facts of disqualification of Circuit Judge Joseph C. Hutcheson, Jr. as set out in the Rule 60(b) FRCP Motion filed before the Court of Appeals.

CONSTITUTION AND STATUTES INVOLVED

The constitutional and statutory provisions involved are:

The V-AMENDMENT, "due process of law" clause, printed in APPENDIX D-1, infra, p. 35.

28 U.S.C. Sec. 137, printed in APPENDIX D-2, infra, p. 35.

28 U.S.C. Sec. 144, printed in APPENDIX D-3, infra, p. 35.

28 U.S.C. Sec. 455, printed in APPENDIX D-4, infra, p. 36.

Federal Rules of Civil Procedure Rules 60(b) printed in APPENDIX D-5, infra, p. 36.

28 U.S.C. 1254(1), printed in APPENDIX D-6, infra, p. 38.

STATEMENT

This litigation concerns the fraudulent activities of Defendants and Federal Judges hereinafter related as follows: The original litigation Kinnear-Weed Corporation, Plaintiff v. HUMBLE OIL AND REFINING COMPANY, Defendant, Civil Action 2363 was tried before District Judge Lamar Cecil, United States District Court for the Eastern District of Texas in the year 1955 resulting in judgment obtained through fraud by Defendant against Plaintiff-Petitioner. District Judge Cecil "*had much interests including oil and gas and other business dealings*", with Defendant Humble Oil and Refining Company at the time of the trial of said Civil Action No. 2363 which oil and gas interests and business dealing said Judge Cecil and Defendant *both concealed* from Plaintiff-Petitioner, and thereby, in violation of 28 U.S.C. Sec. 455 practiced fraud upon the Federal Courts involved and your Petitioner as set out in Plaintiff-Petitioners Complaint (R. 95).

Plaintiff-Petitioner instituted an Independent action being Civil Action No. 63-H-509 in The United States District Court for the Southern District of Texas, Houston Division (R. 95), alleging that District Judge Lamar Cecil and Defendants Humble Oil and Refining Company, et al.,

practiced "*fraud upon the Federal Courts*", involved, including this Supreme Court, by concealing their business dealings and interests from said Courts and your Petitioner.

District Judge Joe M. Ingraham, United States District Court For the Southern District of Texas pirated and usurped the jurisdiction of said Civil Action No. 63-H-509 and Plaintiff-Petitioner filed Plaintiff's Motion to disqualify District Judge Joe M. Ingraham (R. 89) with attached AFFIDAVIT of disqualification (R. 90).

Plaintiff-Petitioner filed PETITION FOR WRITS OF MANDAMUS AND PROHIBITION against Hon. Joe M. Ingraham, Respondent in the United States Court of Appeals for the Fifth Circuit, Case No. 21,870, (R. 3), arising out of said Civil Action No. 63-H-509, (R. 89).

The Court of Appeals entered its Order of September 10, 1964 against Petitioner and for Respondent Judge Joe M. Ingraham, (R. 24). Plaintiff-Petitioner filed original 60(b) FRCP Motion in the United States Court of Appeals for the Fifth Circuit in case No. 21,870, (R. 25) and SUPPLEMENTAL 60(b) FRCP Motion thereto (R. 66).

The Court of Appeals granted Petitioner's original 60(b) FRCP Motion and set aside its September 10, 1964 Order because of the disqualifying oil and gas interests of Circuit Judge Joseph C. Hutcheson, Jr., with defendants in Civil Action No. 63-H-509 but denied said supplemental 60(b) FRCP Motion (R. 70), which interests Judge Hutcheson and defendants concealed from Petitioner and the United States Courts involved.

Plaintiff-Petitioner filed its second PETITION FOR WRITS OF MANDAMUS AND PROHIBITION against

Hon. Joe M. Ingraham, Respondent in case No. 22,032 in the United States Court of Appeals for the Fifth Circuit, (R. 73), and the Court of Appeals issued its Order denying said petition, (R. 117); and, Petitioner's Motion To Stay (R. 71) in said case No. 22,032 was denied by order of the Court of Appeals entered November 3, 1964 (R. 118). Plaintiff-Petitioner filed its second Application to Stay (R. 119) in said case No. 22,032 which was denied by the Court of Appeals by Order of November 16, 1964, (R. 121-122).

REASONS FOR GRANTING THE WRIT

I

These cases No. 21,870 and No. 22,032 of the Court of Appeals below presents a jurisdictional question arising out of the usurpation by District Judge Joe M. Ingraham of Civil Action No. 63-H-509 originally assigned and pending on the Docket (R. 19) of the District Judge Allen B. Hannay in the United States District Court for The Southern District of Texas, and, Petitioner had a legal right and did institute mandamus and prohibition proceedings against Respondent Judge Ingraham in the Court of Appeals below since no other remedy was available. The Court of Appeals erred in refusing to issue writs of mandamus and prohibition by order (R. 24) entered September 10, 1964 which order (R. 24) was set aside by its order (R. 70) of October 6, 1964 in case No. 21,870 and, in refusing to issue writs of mandamus and prohibition by order (R. 117) entered November 3, 1964 in case No. 22,032. In view of the circumstances in the above referred to cases Petitioners only remedy was by mandamus and prohibition. *In Re*

Morrison, 147 U.S. 14, 37 L.Ed. 60, 13 S.Ct. 246, See headnote 3 page 36, which states:

> "A writ of prohibition will issue only in case of want of jurisdiction either of the parties or of the subject-matter of the proceeding. Re Fassett, 142 U.S. 479, 486 (35-1086, 1089)."

Judge Ingraham usurped the jurisdiction of Civil Action No. 63-H-509 by "*doing the defendants bidding*" as alleged in PETITION FOR WRITS OF MANDAMUS AND PROHIBITION (R. 3) in case No. 21,870 and as alleged in PETITION FOR WRITS OF MANDAMUS AND PROHIBITION (R. 73) in case No. 22,032. Petitioners proof of said Defendants bidding is embodied in letter of Defendants dated August 6, 1964 (R. 15) requesting Respondent Judge Ingraham to set a date for a conference in Civil Action No. 63-H-509. On August 7, 1964 Judge Ingraham acted upon Defendants request for a conference and made order (R. 17) setting Pre-trial conference for September 9, 1964. Defendants and Judge Ingraham knew at the times stated above that Civil Action No. 63-H-509 was pending on the Docket (R. 19) having been legally assigned upon filing under the local rule of said Court on September 23, 1963 to the jurisdiction of the Court of District Judge Allen B. Hannay. There is "*no entry*" on said docket (R. 19) that Judge Hannay disqualified himself in said action nor is there "*any order or evidence*" showing that said action was transferred by an order of the District Court from the jurisdiction of Judge Hannay to the jurisdiction of Judge Ingraham. Judge Ingraham verified the fact that said action was originally assigned to Judge Hannay by statement in TRANSCRIPT (R. 84) in open court

on September 9, 1964 at the Pre-Trial Conference, quoted as follows:

> "As you know, when a case is filed you do not know in advance which judge it is going to, and part of our system is after the suit is filed you then remove the tag and see what name is underneath. In this case, the name of Judge Hannay was underneath."

Judge Ingraham by his statement quoted above admits that the local rule of the District Court of the Southern District of Texas is to remove the tag and to see what name is underneath after the case is filed to know *"which judge it is going to"* as part of the system of the local rules of the Court. He further states *"in this case, the name of Judge Hannay was underneath."* Accordingly, it is unquestionable, that Civil Action No. 63-H-509 was originally assigned and attached to the jurisdiction of the Court of Judge Hannay. Once the jurisdiction attached to the Court of Judge Hannay by assignment according to 28 U.S.C. Sec. 137 and the local rules of the said court pursuant thereto, and, there being no order from all of the judges of said Court agreeing to *"and ordering transfer"* of Civil Action No. 63-H-509, therefore, the jurisdiction of the Court of Judge Hannay in 63-H-509 should be protected by Writs of mandamus and prohibition against Judge Ingraham who has usurped the Jurisdiction in a raw-grab for power in choosing cases and picking litigation in violation of 28 U.S.C. 137 and the local rules of the District Court for the Southern District of Texas pursuant thereto relative to the assignment of cases by the sealed card system in said District Court. Of significance is the first paragraph of 28 U.S.C. Sec. 137 which provides.

"The business of a court having more than one judge shall be divided among the judges as provided by the rules and order of the court."

28 U.S.C. Sec. 137, APPENDIX D-2, infra, p. 35, and the local rules of said Court pursuant thereto above stated by Judge Ingraham is the law of the case pertaining to the assignment of Civil Action No. 63-H-509 to the jurisdiction of the Court of Judge Hannay which *could not be re-assigned* to Judge Ingraham *without order* from all of the judges of said Court. Judge Ingraham has not and cannot produce an order from all of the judges of said Court that Civil Action No. 63-H-509 was transferred out of the jurisdiction of the Court of Judge Hannay and re-assigned to the jurisdiction of the Court of Judge Ingraham. It has been held under 28 U.S.C. Sec. 137 not even the Chief Judge of a multi-judge Court has authority to re-assign cases once assignment has been made of a case to the jurisdiction of the court of one of the judges of a multi-judge court, where there is a local rule for the assignment of the cases. See the government case of *U.S. v. Heath*, 103 F. Supp. 1, 1952, which states in part on page 2:

"(1) 4. No expressed or implied power is granted a chief judge to affect administratively, directly or indirectly, litigation assigned to and pending before another judge of the court. 28 U.S.C. Sec. 136, 137, 756."

Under the first paragraph of 28 U.S.C. Sec. 137 Congress clearly provides that the local rules and orders of the entire members of a multi-judge district court controls the division of business of that court. The Southern District of Texas has a local rule for assignment of cases in the division of its business as quoted by Judge Ingraham in

this case 63-H-509 and is violating said agreed local rule of said District Court by usurping the jurisdiction of 63-H-509, which according to said local rule, had been assigned and is pending in the court of Judge Hannay of said district. A writ of mandamus and prohibition should issue against Judge Ingraham for his act of usurping the jurisdiction in this case.

II

Judge Ingraham on September 9, 1964, in open court at pre-trial hearing made statement that he could not disqualify himself on the "mamby-pamby affidavit that makes false statements" by referring to the AFFIDAVIT (R. 10) attached to "PLAINTIFF'S MOTION TO DISQUALIFY DISTRICT JUDGE JOE M. INGRAHAM" (R. 9). The statements made by Judge Ingraham in this regard are set out in TRANSCRIPT (R. 86), which in pertinent part states:

> "Now, if you believe that I am biased and prejudiced against you, and in favor of the defendants, then I should disqualify. *But I cannot do it on* this mamby-pamby *affidavit that makes false statements.* (Emphasis supplied)

Petitioner's remedy in this case is mandamus and prohibition because Judge Ingraham can not pass upon the truth or falsity of the "fact allegations" set out in the disqualifying affidavit. See the Supreme Court Case of *Berger v. United States*, 255 U.S. 22 at page 36, 65 L.Ed. 481, 41 S.Ct. 230 at page 234, wherein the court said:

> *"To commit to the judge a decision upon the truth of the facts* gives chance for the evil against which the section is directed (Section now 28 U.S.C. Sec. 144). The remedy by appeal is inadequate. It comes after

> the trial and if prejudice exists it has worked its evil and a judgment of it in a reviewing tribunal is precarious. It goes there fortified by presumptions, and nothing can be more elusive of estimate or decision *than a disposition of a mind* in which there is a personal ingredient." (Emphasis supplied).

The affidavit on its face alleges facts sufficient to legally disqualify Judge Ingraham under 28 U.S.C. Sec. 144, when linked with his usurpation of the Jurisdiction of the case. Judge Ingraham has taken issue with these alleged facts by saying they are false statements. In fact, Judge Ingraham is incorrect that the fact allegations of the affidavit are false statements since his own statements of TRANSCRIPT (R. 84) proves the allegations true. Quoting from statement of TRANSCRIPT (R. 84):

> "THE COURT:
> * * *. As you know, when a case is filed you do not know in advance which judge it is going to, and a part of our system is after suit is filed you then remove the tag and see what name is underneath. *In this case, the name of Judge Allen Hannay was underneath.*" (Emphasis supplied)

The above quotation from Judge Ingraham recognized that Judge Hannay had been assigned 63-H-509 under the local rules of said district court used for that purpose, and further, the DOCKET (R. 19) bears this out as the name of "ALLEN B. HANNAY" is written thereon in the upper right hand corner of the Docket. So, the affidavit is correct and does not make false statements.

II

Judge Ingraham in refusing to disqualify himself passed upon the *"truth"* or *"falsity"* of the fact allegations set

out in the affidavit by ruling that said allegations are "false statements" which he takes into consideration in passing upon the sufficiency of the allegations to determine whether he should disqualify or not. In this, he is in error as to the law as laid down by the Supreme Court in the *Berger* case supra. Writs of mandamus and prohibition should issue directing and preventing Judge Ingraham from proceeding further in 63-H-509 as provided by 28 U.S.C. Sec. 144, because of the usurpation and pirating Civil Action 63-H-509.

Further, in open court Judge Ingraham in trying to extricate himself from the position of pirating and usurping the jurisdiction in 63-H-509 made statement in TRANSCRIPT (R. 84-85) that all of the judges of the District Court agreed to assign to Judge Ingraham all of the *Kinnear-Weed patent suits*, according to the quotation of his statement from TRANSCRIPT (R. 84-85):

> "* * *. There are a number of these *Kinnear-Weed Corporation patent suits*. Will you tell me how many?
>
> MR. KINNEAR: Your Honor, I think there are twenty-eight. I believe that's correct.
>
> THE COURT: All right. There are twenty-eight of them. If you will look in those files you will see that some of those will show the name of Judge Hannay and some will show the name of Judge Connally, some will show the name of Judge Noel and some will show my name. In handling the work of the Court it was dissussed by all of the judges, and I was asked to take them all." (Emphasis supplied)

From the above quoted statement it is clear that Judge Ingraham was only assigned the "*Kinnear-Weed patent*

suits", by agreement of all of the judges of said court. But nowhere could Judge Ingraham show by agreement of all of the judges of the court that he was assigned Civil Action 63-H-509. From a casual reading of the COMPLAINT (R. 95-115), it is crystal clear that it is an Independent Action alleging "fraud upon the Court" to relieve Petitioner from a judgment obtained by fraud, which action is excepted from Rule 60 (b) of The Federal Rules of Civil Procedure, and, said Independent Action "*is not*" a "Kinnear-Weed Corporation patent suit", therefore, is not one of the twenty-eight Kinnear-Weed Corporation patent suits assigned to Judge Ingraham by agreement of all of the judges of said court, as per his own statement above quoted. Should the Supreme Court allow Judge Ingraham to pirate and usurp the jurisdiction of Civil Action 63-H-509 by picking and choosing this litigation requested by Defendants to the prejudice of your Petitioner. Petitioner has the lawful right to try its case before a fair and impartial judge. Judge Ingraham has shown personal bias and prejudice under 28 U.S.C. Sec. 144 for Defendants by doing their bidding and usurping the jurisdiction of 63-H-509 without authority and at the request of Defendants as per letter request of August 6, 1963 (R. 15). Kinnear-Weed Corporation patent cases are instituted under the Patent Statutes, whereas, Petitioners Civil Action 63-H-509 is brought under the exception to Rule 60(b) F.R.C.P. which makes 63-H-509 foreign to the patent cases.

III

The facts of disqualification of Circuit Judge Hutcheson set out in Petitioner's Rule 60(b) F.R.C.P. Motion with

the official certified photocopies of documents attached, when served upon said Respondent Judge Ingraham in case No. 21,870 in the Court of Appeals, he should have in *good faith immediately* upon receipt thereof called in said Defendants in 63-H-509 and ordered said Defendants to come forward with Respondent as invited by authorized letter (R. 65) by the Court of Appeals and revealed said facts of disqualification of Judge Hutcheson as reflected by said attached certified documents to said Rule 60(b) Motion (R. 25-64). Defendants had actual prior knowledge of said disqualifying facts as the certified documents involved oil and gas deals and transactions between Defendants and Judge Hutcheson. Judge Ingraham knew when served with certified official copies of said documents, showing that Judge Hutcheson was doing thousands of dollars of business annually with Defendants in 63-H-509, prior to and during the pendency of Case No. 21,870 and Case No. 22,032 before the Court of Appeals, and, that Judge Hutcheson by reason thereof was disqualified to act as Circuit Judge in said Case No. 21,870 in violation of 28 U.S.C. Sec. 455. However, Judge Ingraham and Defendants, *"after knowledge, in the worst of bad faith remained silent"*, which is *"concealment"* and thereby practiced fraud upon the District Court and the Court of Appeals and Petitioner, thereby placing Petitioner and its No. 21,870 cause in jeopardy before the Court of Appeals. Judge Hutcheson had acted as a member of the Court of Appeals at the time and had denied by its Order (R. 24) on September 10, 1964 Petition For Writs of Mandamus and Prohibition of Petitioner. Judge Ingraham was *"willing"* to let the Court of Appeals Order of September 10, 1964 *"stand"* against your Petitioner *"without raising his hand"* before the Court of Appeals, although

"*duty bound*" to request of the Court of Appeals to strike down said order of September 10, 1964, which order if allowed to stand would perpetuate Judge Ingraham as acting usurper Judge of 63-H-509 in the District Court. This shows a clear intent and purpose of Respondent Judge Ingraham to have a bent and corrupt mind of personal bias and prejudice for Defendants and against your Petitioner to keep and hold unlawful jurisdiction in said Civil Action 63-H-509. This is the personal bias and prejudice contemplated in 28 U.S.C. Sec. 144 to disqualify a judge to sit and proceed in a case, and, under the circumstances stated calls for issuance of a writ of mandamus and a writ of prohibition directed to Respondent Judge Ingraham to proceed no further in 63-H-509.

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted. Oral argument is respectfully requested.

Respectfully submitted,

WILLIAM E. KINNEAR
419-21 Beaumont Savings Bldg.
Beaumont, Texas
Counsel for Petitioner

Dated: December 26, 1964.

CERTIFICATE OF COUNSEL

I, William E. Kinnear, Counsel for Kinnear-Weed Corporation, Petitioner in the above entitled case, hereby certify that the above and foregoing, PETITION FOR WRIT OF

CERTIORARI, and referenced TRANSCRIPT OF RECORD, and APPENDIX are presented in good faith, and not for the purpose of delay, restricted to the grounds therein specified but in the opinion of counsel, well founded in law and proper to be filed herein.

WILLIAM E. KINNEAR

PROOF OF SERVICE

I, William E. Kinnear, Counsel for Kinnear-Weed Corporation, Petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 26 day of December, 1964, I served copies of the foregoing PETITION FOR WRIT OF CERTIORARI and APPENDIX, by mailing the required copies in duly addressed envelopes by U.S. Mail, postage prepaid to Honorable Joe M. Ingraham, United States District Judge, United States District Court for the Southern District of Texas, United States Court House, Houston, Texas, and served copies in the same manner to: Mr. Garret R. Tucker, Jr., Esq. Baker, Botts, Shepherd & Coates, 1600 Esperson Building, Houston, Texas, and Mr. C. O. Ryan, Kelley, Ryan & Merrell, 666 Gulf Building Addition, Houston, Texas.

WILLIAM E. KINNEAR
Suite 419-21 Beaumont Savings Bldg.
Beaumont, Texas
Counsel for Petitioner

APPENDIX "A-1"

BAKER, BOTTS, SHEPHERD & COATES
Esperson Building
Houston 77002

G-20,363 August 6, 1964

Re: Kinnear-Weed Corporation v.
Humble Oil & Refining Company
C.A. 63-H-509

Honorable Joe Ingraham,
United States District Judge,
Federal Courts Building,
Houston, Texas

Dear Judge Ingraham:

On June 18, 1964 I wrote Your Honor advising of the entry of an order in the United States District Court for the District of Columbia transferring the action of Kinnnear-Weed Corporation v. Humble Oil & Refining Company, C.A. 1706-62, from that court to this Court, and stating that if and when the transfer actually took place, we planned to ask the Court for a conference to discuss the disposition of pending motions in this action and the consolidation of the transferred action with the case pending before Your Honor, and to determine when a trial on the merits could be expected.

According to information given to us by the Clerk, the District of Columbia action was received and docketed in this Court on July 23, 1964, as No. 64-H-354, and has been assigned to Judge Ben Connally.

Since we understand Your Honor will be on vacation until after Labor Day, we suggest the proposed conference

be held, at Your Honor's convenience, during the week of September 8.

Very truly yours,

/s/ GARRETT R. TUCKER, JR.
Garrett R. Tucker, Jr.

GRT:14

cc: Honorable Ben C. Connally,
United States District Judge,
Federal Courts Building
Houston, Texas.

cc: Mr. W. E. Kinnear,
Suite 419-21,
Beaumont Savings Building,
Beaumont, Texas.

cc. Mr. Melvin F. Fincke,
Humble Oil & Refining Company,
Humble Building,
Houston, Texas. 77002

cc: Mr. Walter B. Morgan,
Humble Oil & Refining Company,
Humble Building
Houston, Texas. 77002

cc: Mr. C. O. Ryan,
Kelley & Ryan,
Gulf Building Addition,
Houston, Texas. 77001

APPENDIX "A-2"

UNITED STATES DISTRICT COURT
Southern District of Texas
Office of the Clerk

V. Bailey Thomas,
Clerk

Houston, Texas
August 7, 1964

Re: CA 63-H-509 Kinnear-Weed Corp. vs. Humble Oil & Refining Co.

Messrs. Baker, Botts, Shepherd & Coates
Esperson Bldg.
Houston 2, Texas Attention: Mr. Garrett Tucker

Mr. W. E. Kinnear
Suite 419-21
Beaumont Savings Building
Beaumont, Texas

Mr. Walter B. Morgan
Humble Oil & Refining Co.
Humble Building
Houston 2, Texas

Messrs. Kelley & Ryan
Gulf Building Addition
Houston 2, Texas Attention: Mr. C. O. Ryan

Gentlemen:

The above case is set for pre-trial conference on September 9, 1964, at 9:30 A.M., before Honorable Joe Ingraham, Judge.

By Order of the Court:

V. BAILEY THOMAS, Clerk
By ALBERT E. ANDERSON, Deputy
Albert E. Anderson

APPENDIX "B-1"

53-H-509 CIVIL ACTION DOCKET

JOB INFORMATION
NEVER-3-MATION

TITLE OF CASE	ATTORNEYS
KINNEAR-MOED CORPORATION	For Plaintiff: William E.Kinnear Suite 413-21 Beaumont Savings Bldg;Beaumont, Tex
VS	
ROYALTY OIL AND REFINING COMPANY,HINES H.BAKER,REX G. BAKER,M.M.FERGUSON,MORGAN J.DAVIS,C.B.REISTLE,JR.	
RICHARD J.GONZALEZ,HERMAN P.PRESSLER,RALPH J.SCHLUMBERGER RAY M.HANSON,C.D.LOPER,H.K.ARNOLD,NELSON JONES, and	For Defendant: Kelley & Ryan C.D.Ryan;Jr.Gulf Bldg.,Hou.
STANDARD OIL COMPANY, a New Jersey Corporation	Atty.for Standard Oil Co.

CAUSE OF ACTION For a decree of this Court declaring that all judgments,orders,etc.entered in CA.2363 in US District Court for Eastern District of Texas be set aside and adjudged null and void;for new trial,damages and costs.

JURY TRIAL CLAIMED

ON

DATE	PLAINTIFF'S ACCOUNT	RECEIVED	DISBURSED	DATE	DEFENDANT'S ACCOUNT	RECEIVED	DISBURSED
1/63	William E.Kinnear						
		15.00					

ABSTRACT OF COSTS		RECEIPTS, REMARKS, ETC.
TO WHOM DUE	AMOUNT	

63-H-509 Judge Hannay

DATE 63	PROCEEDINGS	AMOUNT
10-21	Complaint- filed in duplicate	
"	Summons with copies do and copies Cmplt.attached for all Houston Defendants issued and delivered to Marshal	
"	Summons with 2 copies do and 2 copies Cmplt.attached for service on Humble Oil & Refg.Co thru Secretary of State,Austin,Tex issued and delivered to Marshal for transmittal to Marshal WDT Austin, Texas	
"	Summons with 2 copies do and 2 copies Cmplt.attached for service on Standard Oil of New Jersey thru Secretary of State of State of Texas,Austin,Tex; issued and delivered to Marshal for transmittal to Marshal WDT at Austin,Texas	
10-31-63	Summons (Humble Oil,thru Secretary of State) retd and filed Executed 9/27/63 on Secretary of State thru Agent,W.O.Bowers, Austin, Texas	
"	Summons (Standard Oil Co.) retd and filed.Executed 9/27/63 on Secretary of State thru Agent,W.O Bowers,Austin,Texas	
10-11	MOTION OF ENDYMION CORP. FOR EXTENSION OF TIME WITHIN WHICH TO MOVE, ANSWER OR OTHERWISE PLEAD, FILED IN DUPLICATE.	
	READY, MONDAY, OCTOBER 21, 1963	
10-14-63	Standard Oil Company's motion for extension of time within which to move,answer or otherwise plead and notice of motion,filed in dup (READY MONDAY OCTOBER 21,1963)	
10-17	Summons (Morgan J. Davis) returned executed 10/3/63 - filed	
10-17	Summons (C.E. Reisle) returned executed 9/26/63 - filed	
10-17	Summons (Humble Oil and Refining Company, Standard Oil Company) returned and filed, executed 10/3/63 by serving Morgan J. Davis	
10-17	Summons (H. M. Ferguson executed 9/26/63) (Hines H. Baker executed 10/2/63) (Rex G. Baker executed 10/16/63) returned and filed	
10-17	Summons (Nelson Jones executed 9/25/63) (Herman P. Pressler executed 9/26/63) (Ralph J. Schilthuis executed 9/26/63) (H. K. Arnold unexecuted 10/14/63) (Richard J. Gonzalez executed 10/14/63) (Ray H. Horton executed 9/26/63) (O. L. Luper unexecuted) returned and filed	
10-18	Opposition of Plaintiff to Motion of Defendant Standard Oil Co. for Extension of Time with which to Move,Answer or Otherwise Plead Dated Oct.14,1963- filed in duplicate	

CAUSE No. 63-H-509 RE: Kinnear-Weed-v-Humble Oil

DATE	PROCEEDINGS
10	Opposition of Plaintiff to Motion of Individual Defendants for Extension of Time within which to Move, Answer or Otherwise plead Dated Oct.11,1963-filed in duplicate
10	Motion of Individual Defendants for Extension of Time within which to Move, Answer or Otherwise Plead- filed in duplicate (Set on M/D for Nov. 11, 1963)
5/63	Opposition of Plaintiff to Motion of Individual Defendants for Extension of time within which to Move, Answer or Otherwise Plead dated Oct. 30,-1963, filed in duplicate
-21-63	PLAINTIFFS FURTHER OPPOSITION TO DEFENDANTS MOTION FOR EXTENSION OF TIME WITHIN WHICH TO MOVE, ANSWER OR OTHERWISE PLEAD, filed in duplicate
1/21/63	Original Answer of Defendants Hines H. Baker, Rex G. Baker, H. W. Ferguson, Morgan J. Davis, C.E.Reistle,Jr., Richard J. Gonzalez, Norman P. Prossler, Rolpa J. Schilthuis, Ray H.Horton, H.K.Arnold, and Nelson Jones filed in duplicate
1-21-63	Letter from Atty.Kinnear with reference to correction to Plaintiffs further opposition to Deft's motion for extension of time within which to move,answer or otherwise plead,filed
1/21/63	Answer of Standard Oil Company filed in duplicate
2/4/63	Notice of Taking of the Deposition of William F. Weed filed
2/4/63	Notice of Taking of the Deposition of C. W. Kinnear filed
12-9-63	Motion of Humble-Delaware for leave to intervene as defendant and notice of submission,filed in duplicate (READY MONDAY DECEMBER 16,1963)
12-12-63	Plaintiff's opposition to Dec.6,1963 motion to intervene of Humble Oil & Refining Co.(Inc.in Del.)and notice of motion,filed in dup (READY MONDAY DECEMBER 23,1963)
12-12-63	Plaintiff's motion to stay all proceedings in C.A.# 63-H-509 and to stay taking of oral depositions noticed for hearing to C.W.Kinnear and W.F.Weed,and notice of hearing,filed in dup (READY MONDAY DECEMBER 23,1963)
12/23/63	Response of Defendant Standard Oil Company to Plaintiff's Motion to Stay all Proceedings filed in duplicate
12-20-63	Response of Humble-Delaware to plaintiff's opposition to Humble's motion to intervene, filed in duplicate
12-20-63	Opposition of individula defendants to plaintiff's motion to stay all proceedings, filed in duplicate
1-21-64	Notice of taking of the deposition of C.W.Kinnear, filed in duplicate
2-3-64	Plaintiff's supplemental motion to stay taking of oral deposition of C.W.Kinnear by defendant Standard Oil Co. noticed for February 4, 1964 pending hearing on

CAUSE NO. CA-61-H-509 RE: _____ Judge JOE INGRAH

DATE	PROCEEDINGS
3-3-64	(Cont'd) plaintiff's motion to stay all proceedings
	in this case, filed in duplicate
3-3-64	(JI) Oral hearing in open court on above motion
	(Taking of deposition continued until 4 weeks from this
	date - same place and time. Order to be presented)
3-11-64	(JI) Order Continuing Deposition of C.W.Kinnear- filed and
	entered PARTIES NOTIFIED PURSUANT TO RULE 77(d)
3-24-64	Plaintiff's supplemental motion to stay all proceedings
	in this case, filed in duplicate (M/D 3-2-64)
3-26-64	Response of Defendant, Standard Oil Co. to Plaintiffs supplemental motion
	to stay all proceedings in this case, filed in duplicate
3-2	[illegible]
	[illegible]
3-4-64	Non-appearance certificate of taking deposition, received from Notary
	and filed
3-7-64	Motion of defendant, Standard Oil Company, to compel appearance
	of W. C. Kinnear, filed in duplicate (M/D 3-16-64)
3-16-64	Plaintiff's response to motion of defendant Standard Oil Co. to take
	deposition of C.A.Kinnear, filed in dup
6-19-64	PLAINTIFF'S MOTION TO DISQUALIFY DISTRICT JUDGE JOE M. INGRAHAM,
	filed in duplicate (Not On Mo.Dkt. Plff. Notified By Letter)
6-24-64	Plaintiffs notice of submission of motion to disqualify Dist.Judge
	Joe M.Ingraham, filed in dup
	(READY SEPTEMBER 7,1964)

CERTIFIED COPY (Rev. April 1953) D. C. Form No. 31

United States of America
SOUTHERN DISTRICT OF TEXAS } ss:

I, V. BAILEY THOMAS, - - - - - - - - - , Clerk of the United States District Court for the SOUTHERN District of TEXAS, do hereby certify that the annexed and foregoing is a true and full copy of the original IN CIVIL ACTION NO. 63-H-509
HOUSTON DIVISION

KINNEAR-WEED CORPORATION vs HUMBLE OIL AND REFINING COMPANY, ET AL.,

now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at HOUSTON, TEXAS this 2ND day of SEPTEMBER, A. D. 19 64

V. BAILEY THOMAS, Clerk.

By Edwina Blythe, Deputy Clerk.

FPI ATLANTA—6-3-63—500—3501

APPENDIX "C-1"

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 21,870

KINNEAR-WEED CORPORATION,
Petitioner,

v.

HONORABLE JOE M. INGRAHAM, United States District Judge, etc.,
Respondent.

Before TUTTLE, Chief Judge, HUTCHESON and BELL, Circuit Judges.

BY THE COURT:

The petition for writ of mandamus and writ of prohibition is DENIED and the petition is DISMISSED. The Motion for stay is DENIED.

APPENDIX "C-2"

IN THE

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

Office of the Clerk
September 22, 1964

Edward W. Wadsworth
Clerk

Room 408 - 400 Royal St.
New Orleans, La. 70130

Mr. William E. Kinnear
Attorney at Law
Suite 419-21
Beaumont Savings Bldg.
Beaumont, Texas

Re: No. 21870 - Kinnear-Weed Corp. vs. Hon. Joe M. Ingraham, Etc.

Dear Sir:

I am authorized by this court to advise that your Motion to Vacate and Set Aside Order of Sept. 10, 1964 was received and filed this 22nd day of September, 1964, and under the rules and practice of this Court will be presented for ruling without oral argument on or about Sept. 29, 1964*, together with any response or opposition that may be filed by opposing counsel by that date.

Very truly yours,
/s/ E. W. WADSWORTH
Edward W. Wadsworth, Clerk

cc: Mr. C. O. Ryan
Mr. Garrett R. Tucker, Jr.

---

*This is only the date on which it is now expected that the matter will be forwarded for ruling, and does not mean that this office will be able to advise counsel of the Court's action by then. Counsel should allow at least ten days' time thereafter for advice as to the Court's ruling before making inquiry.

APPENDIX "C-3"

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 21,870

KINNEAR-WEED CORPORATION,
Appellant,
v.
JOE M. INGRAHAM, U. S. District Judge,
U. S. District Court for the Southern
District of Texas,
Appellee.

ORDER ON MOTION UNDER RULE 60(b) FEDERAL RULES OF CIVIL PROCEDURE TO VACATE AND SET ASIDE ORDER DATED SEPTEMBER 10, 1964, and TO GRANT MOTION TO STAY, PETITION FOR WRIT OF MANDAMUS AND WRIT OF PROHIBITION

Before TUTTLE, Chief Judge, BELL, Circuit Judge, and WHITEHURST, District Judge.

BY THE COURT:

It is ORDERED that the Motion of Petitioner under Rule 60(b) Federal Rules of Civil Procedure to vacate and set aside the Order of this Court dated September 10, 1964, in this cause be, and the same is hereby GRANTED and the said order is hereby vacated.

The supplemental motion to stay and the petition for writ of mandamus and writ of prohibition are DENIED. The petition is DISMISSED.

APPENDIX "C-4"

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 22032

KINNEAR-WEED CORPORATION,
Petitioner,
v.
HON. JOE M. INGRAHAM, United States District Judge for the Southern District of Texas,
Respondent.

Before TUTTLE, Chief Judge, HUTCHESON and BELL, Circuit Judges.

BY THE COURT:

The petition of Kinnear-Weed Corporation for writ of mandamus and for writ of prohibition against Honorable Joe M. Ingraham, United States District Judge for the Southern District of Texas, is hereby DENIED. See Rule 13(b), 28 U.S.C.A., Rules, U.S. Court of Appeals, Pocket Part page 63.

Judge Joseph C. Hutcheson, Jr., a regular member of the panel of the court for this date, takes no part in the consideration or determination of this motion.

APPENDIX "C-5"

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 22032

KINNEAR-WEED CORPORATION,
Petitioner,

v.

HON. JOE M. INGRAHAM, United States District Judge for the Southern District of Texas,
Respondent.

Before TUTTLE, Chief Judge, HUTCHESON and BELL, Circuit Judges.

BY THE COURT:

IT IS ORDERED that the motion of petitioner to stay further proceedings in the District Court in Civil Action No. 63-H-509 pending disposition of its petition for writ of mandamus and writ of prohibition in this cause be, and the same is, hereby DENIED.

Judge Joseph C. Hutcheson, Jr., a regular member of the panel of the court for this date, takes no part in the consideration or determination of this motion.

APPENDIX "C-6"

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

OFFICE OF THE CLERK
November 16, 1964

Edward W. Wadsworth
Clerk

Room 408 - 400 Royal St.
New Orleans, La. 70130

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

Re:
No. 22032—Kinnear-Weed Corp., v. Hon. Joe M. Ingraham

Gentlemen:

The following action has this day been taken in the above case:

( ) An extension of time for filing and docketing the record on appeal has been granted to and including

( ) An extension of time for filing designation as to printing of the record has been granted to and including

( ) An extension of time for filing brief for ( ) appellant ( ) appellee has been granted to and including

( ) The Court's opinion has this day been rendered and a copy thereof is enclosed

( ) An order has been entered extending the time for filing a petition for rehearing to and including
(xx) Order enclosed has been entered.

Very truly yours,

EDWARD W. WADSWORTH, CLERK
By CLARA R. JAMES
Chief Deputy Clerk

cc: Messrs. Frank B. Pugsley
and Garrett R. Tucker, Jr.
Mr. Cornelius O. Ryan
Mr. William E. Kinnear

APPENDIX "C-6"

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 22032

KINNEAR-WEED CORPORATION,
Petitioner,
v.
HON. JOE M. INGRAHAM, United States District Judge
for the Southern District of Texas,
Respondent.

Before TUTTLE, Chief Judge, and BELL, Circuit Judge.

BY THE COURT:

IT IS ORDERED that petitioner's application for stay of this Court's orders of September 10, 1964 and October 6, 1964 both in Case No. 21870, and also for stay of this Court's order of November 3, 1964 in case No. 22032 be, and the same is hereby, DENIED.

APPENDIX "D-1"

CONSTITUTION OF THE UNITED STATES

Amendment V—"Due Process of Law" Clause

"* * * nor be deprived of life, liberty, or property, without due process of law."

APPENDIX "D-2"

TITLE 28 U.S.C. Sec. 137

Sec. 137. Division of business among district judges—

The business of a court having more than one judge shall be divided among the judges as provided by the rules and orders of the court.

The chief judge of the court shall be responsible for the observance of such rules and orders, and shall divide the business and assign the cases so far as such rules and orders do not otherwise prescribe.

If the district judges in any district are unable to agree upon the adoption of rules or orders for that purpose the judicial council of the circuit shall make the necessary orders.

APPENDIX "D-3"

TITLE 28 U.S.C. Sec. 144

Sec. 144. Bias or prejudice of judge—

Whenever any party to any proceeding in a district court makes and files timely and sufficient affidavit that the judge

before whom the matter is pending has a personal bias and prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and reasons for the belief that bias and prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

APPENDIX "D-4"

TITLE 28 U.S.C. Sec. 455

Sec. 455. Interest of justice or judge—

Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceeding therein.

APPENDIX "D-5"

Rule 60 (b), Federal Rules of Civil Procedure

"(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or

his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28 U.S.C. Sec. 1655, or to set aside a judgment for fraud upon the Court. Writs of coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action. As amended Dec. 27, 1946, and Dec. 29, 1948, effective Oct. 20, 1949."

APPENDIX "D-6"

TITLE 28 U.S.C. Sec. 1254(1)

§1254. Courts of appeals; certiorari; appeal, certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; * * *. June 25, 1948, c. 646, 62 Stat. 928.

LE COPY

Office-Supreme Court, U.S.
FILED
JAN 25 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 802

KINNEAR-WEED CORPORATION,

Petitioner,

v.

HONORABLE JOE M. INGRAHAM,
UNITED STATES DISTRICT JUDGE,
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENTS NAMED BELOW

GARRETT R. TUCKER, JR.
Esperson Building
Houston, Texas

Counsel for Respondents Humble Oil & Refining Company, Hines H. Baker, Rex G. Baker, H. W. Ferguson, Morgan J. Davis, C. E. Reistle, Jr., Richard J. Gonzalez, Herman P. Pressler, Ralph J. Schilthuis, Ray H. Horton, O. L. Luper, H. K. Arnold and Nelson Jones

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CITATIONS

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Simmons v. United States (C.A. 5, 1937) 89 F. 2d 591, certiorari denied 302 U.S. 700, 82 L. Ed. 540, 58 S. Ct. 19	5

STATUTES

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. .....

KINNEAR-WEED CORPORATION,

Petitioner,

v.

HONORABLE JOE M. INGRAHAM,
UNITED STATES DISTRICT JUDGE,
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION TO GRANT OF CERTIORARI

OPINIONS BELOW

No opinions have been written by either of the lower courts with respect to this case. The relevant orders of the Court of Appeals are set forth as Appendices C-1 to C-6 on Pages 27 to 34 of the petition. The order of the District Court denying Petitioner's motion to disqualify Judge Ingraham was entered December 30, 1964. A copy of that order is attached hereto as Appendix A.

JURISDICTION

The jurisdictional requisites are adequately set forth in the petition.

QUESTIONS PRESENTED

Petitioner filed a motion to disqualify the District Judge, to which was attached an affidavit purporting to allege bias and prejudice on the part of the judge. Upon the judge's refusal to disqualify himself, Petitioner filed motions in the Court of Appeals to stay proceedings in the case, and petitions for mandamus and prohibition to compel the judge to disqualify himself. All of Petitioner's motions and petitions to the Court of Appeals were denied. In the light of these facts, the questions presented are:

I.

Whether the refusal of a District Judge to disqualify himself upon the filing of a purported affidavit of disqualification under 28 U.S.C. § 144 is reviewable by petition for mandamus or prohibition.

II.

Whether Petitioner's motion to disqualify Respondent, Judge Ingraham, and the supporting affidavit attached thereto, are legally sufficient to raise the question of Respondent's disqualification.

STATUTES INVOLVED

The statutes involved, 28 U.S.C. §§ 137, 144 and 455, are set forth on Pages 35 and 36 of the petition.

STATEMENT

Petitioner filed its complaint in the United States District Court for the Southern District of Texas, Houston Division (R. 95). The civil docket (R. 19) printed as Appendix B-1 to the petition (pp. 22-25) indicates that the case was originally assigned to the Honorable Allen B. Hannay, one

of the judges of that court. At some date not expressly shown by that docket, it was transferred to the Honorable Joe M. Ingraham, another of the judges of that court. The docket entries for February 3, 1964, and February 11, 1964 (Petition, p. 25) indicate that on the first of those dates Judge Ingraham presided at an oral hearing on a motion brought by Petitioner and that on the second of those dates he signed and entered an order with respect to continuing the deposition of a witness. It was not until August 19, 1964, that Petitioner filed a motion to disqualify Judge Ingraham, together with a supporting affidavit of C. W. Kinnear, President of Petitioner (R. 89-90).

Petitioner appears to be asserting in that motion and affidavit, first, that Judge Ingraham has no jurisdiction in the cause because it was originally assigned to Judge Hannay and, secondly, that his willingness to proceed in the cause and his setting of a pre-trial conference at the request of one of counsel for Respondents indicates a personal bias and prejudice against Petitioner.

Upon Judge Ingraham's failure to disqualify himself in response to the motion and affidavit, Petitioner filed consecutive petitions for writs of mandamus and prohibition in the Court of Appeals and complains here of the denial of those petitions by that court.

ARGUMENT

Petitioner's claim that Judge Ingraham is "without jurisdiction", which is the basis of its further claim of disqualification, is wholly baseless. 28 U.S.C. § 137 is liberal and flexible in its provision for the division of business among the judges of a court having more than one judge. Unquestionably, Petitioner's case was originally assigned to Judge Hannay, but the docket clearly shows that it was

later assigned to Judge Ingraham. Petitioner has no vested interest in having its case tried by a particular judge, and no standing whatever to challenge the allocation of business among the judges of the court. *Hvass* v. *Graven* (CA 8, 1958) 257 F. 2d 1, certiorari denied 358 U.S. 835, 3 L. Ed. 2d 72, 79 S. Ct. 58. It is significant also that in February, 1964, Petitioner procured a continuance of the taking of the deposition of its president from Judge Ingraham and made no complaint about his alleged lack of jurisdiction or disqualification until August 19, 1964.

Even if it be assumed, arguendo, that Petitioner had not waived any question of disqualification and had filed a sufficient affidavit, review of the District Court's refusal to disqualify would be properly available to Petitioner through appeal and not by writ of mandamus or prohibition. *Albert* v. *U. S. Dist. Court for Western Dist. of Mich.* (CA 6, 1960) 283 F. 2d 61, certiorari denied, 365 U.S. 828, 5 L. Ed 2d 706, 81 S. Ct. 713; *Korer* v. *Hoffman* (CA 7, 1954) 212 F. 2d 211, 45 A.L.R. 2d 930. As stated in *Albert:*

> "In our view, the consideration by the District Judge of the sufficiency of the affidavit of bias and prejudice is not a ministerial, but a judicial act.
>
> "Mandamus does not lie to compel a judge of an inferior court to reverse a decision made by him in the exercise of a legitimate jurisdiction. Ex parte Flippin, 1876, 94 U.S. 348, 24 L. Ed. 194, or to compel him to decide according to the dictates of any judgment but his own, United States v. Lawrence, 1795, 3 Dall. 42, 1 L. Ed. 502, or to control the exercise of his discretion. Gottlieb v. Rubenstein, 6 Cir., 1958, 252 F. 2d 779. This remedy is reserved for really extraordinary causes. It may not be used as a substitute for appeal. Roche v. Evaporated Milk Association, 1943, 319 U.S. 21, 63 S. Ct. 938, 87 L. Ed. 1185; Beneke v. Weick, 6 Cir., 1960, 275 F. 2d 38." (p. 62 of 283 F. 2d)

But Petitioner's affidavit of disqualification was clearly insufficient. 28 U.S.C. § 144 provides in pertinent part:

> "The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists . . . "

Conclusions will not suffice. *Simmons* v. *United States* (CA 5, 1937) 89 F. 2d 591, certiorari denied 302 U.S. 700, 82 L. Ed. 540, 58 S. Ct. 19; *Scott* v. *Beams* (CA 10, 1941) 122 F. 2d 177, certiorari denied 315 U.S. 809, 86 L. Ed. 1209, 62 S. Ct. 794.

The allegation that Judge Ingraham "pirated" a case from a fellow judge, even if taken as a fact instead of a conclusion, would not tend to show bias or prejudice toward either Plaintiff or Defendants in the litigation. Petitioner's other allegation, that Judge Ingraham "did the bidding" of Defendants in ordering a pre-trial hearing as requested, obviously states no fact showing, nor raises any implication, of bias or prejudice in favor of or against either of the parties to the litigation. However, even an adverse ruling is not legal ground for disqualification. *Martin* v. *United States* (C.A. 10, 1960) 285 F. 2d 150.

While it is true that the judge who is alleged to be disqualified cannot pass upon the truth or falsity of the allegations of fact set out in the affidavit, it is equally true that he can and must pass upon the legal sufficiency of the affidavit; that is, whether or not the affidavit actually states facts which would form the basis for a charge of personal bias and prejudice. In *Hurd* v. *Letts,* 152 F. 2d 121, the Court of Appeals for the District of Columbia, in holding that a trial judge had acted properly in refusing to dis-

qualify himself upon the filing of an insufficient affidavit, wrote as follows:

> "Nothing is now better established than the rule that a sufficient affidavit under the statute must state facts and reasons which tend to show personal bias and prejudice regarding the justiciable matter pending and must give support to the charge of a bent of mind that may prevent or impede impartiality of judgment. Berger v. United States, 255 U.S. 22, 33, 41 S. Ct. 230, 65 L. Ed. 481.
>
> "Accordingly, the question in all such cases is whether the affidavit asserts facts from which a sane and reasonable mind might fairly infer personal bias or prejudice on the part of the judge . . ." (pp. 121-122)

The same court in *Eisler* v. *United States*, 170 F. 2d 273, after reiterating the above quoted language, said:

> "We are of the opinion that the lower court properly determined, as the second ground for striking the affidavit, that it was legally insufficient to show personal bias or prejudice regarding the justiciable matter pending before the court. The Supreme Court has ruled that the judge has a lawful right to pass on the legal sufficiency of the affidavit, Berger v. United States, 1921, 255 U.S. 22, 41 S. Ct. 230, 65 L. Ed. 481, subject to appellate review, of course, and we consider it the duty of the judge, when the showing for recusation is insufficient, to remain in the case." (p. 278)

CONCLUSION

It is clear that Petitioner's affidavit of disqualification was insufficient as a matter of law and that, in any event, Petitioner is not entitled to the extraordinary relief it now seeks. It is therefore respectfully submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

GARRETT R. TUCKER, JR.
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Houston, Texas

Counsel for Respondents Humble Oil & Refining Company, Hines H. Baker, Rex G. Baker, H. W. Ferguson, Morgan J. Davis, C. E. Reistle, Jr., Richard J. Gonzalez, Herman P. Pressler, Ralph J. Schilthuis, Ray H. Horton, O. L. Luper, H. K. Arnold and Nelson Jones

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PROOF OF SERVICE

I, Cornelius O. Ryan, counsel of record for Standard Oil Company, Respondent herein, and a member of the bar of the Supreme Court of the United States, hereby certify that I served a copy of the foregoing brief upon Kinnear-Weed Corporation, Petitioner herein, by depositing the same in a United States mail box, with first class postage prepaid, addressed to Petitioner's counsel of record, William E. Kinnear, at his post office address, 419-21 Beaumont Savings Building, Beaumont, Texas 77701, this ..... day of January, 1965.

.....

Cornelius O. Ryan

Counsel for Respondent
Standard Oil Company

APPENDIX A

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KINNEAR-WEED CORPORATION, *Plaintiff*, v. HUMBLE OIL & REFINING COMPANY, ET AL, *Defendants.*	Civil Action No. 63-H-509

KINNEAR-WEED CORPORATION, *Plaintiff*, v. HUMBLE OIL & REFINING COMPANY, ET AL, *Defendants.*	Civil Action No. 64-H-354

ORDER DENYING PLAINTIFF'S MOTION TO DISQUALIFY DISTRICT JUDGE JOE M. INGRAHAM

Plaintiff having filed in C. A. 63-H-509 Plaintiff's Motion to Disqualify District Judge Joe M. Ingraham, to which was attached the affidavit of C. W. Kinnear dated August 18, 1964, and the Court being of the opinion that the allegations in said affidavit, even if taken to be true, were and are insufficient as a matter of law to require the said Judge Ingraham to disqualify under 28 U.S.C.A. Sec. 144, it is therefore ordered, adjudged and decreed that Plaintiff's Motion to Disqualify District Judge Joe M. Ingraham be and it is hereby denied.

/s/ JOE M. INGRAHAM
U. S. District Judge
Entered December 30, 1964

APPROVED:
/s/ GARRETT R. TUCKER, JR.
/s/ CORNELIUS O. RYAN
Attorneys for Defendants

FILE COPY

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JOHN F. DAVIS, CLERK

NO. 802

IN THE

Supreme Court of the United States

October Term, 1964

KINNEAR-WEED CORPORATION, *Petitioner*,

v.

HONORABLE JOE M. INGRAHAM, UNITED STATES DISTRICT JUDGE, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS,

Respondent.

PETITIONER'S MOTION AND REPLY TO BRIEF IN OPPOSITION TO DEFENDANTS HUMBLE OIL AND REFINING COMPANY, INDIVIDUAL DEFENDANTS AND STANDARD OIL COMPANY

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

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NO. 802

IN THE

Supreme Court of the United States

October Term, 1964

KINNEAR-WEED CORPORATION, *Petitioner,*

v.

HONORABLE JOE M. INGRAHAM, UNITED STATES DISTRICT JUDGE, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, *Respondent.*

PETITIONER'S MOTION TO STRIKE AND DISMISS OPPOSITION BRIEF OF DEFENDANTS HUMBLE OIL AND REFINING COMPANY, INDIVIDUAL DEFENDANTS AND STANDARD OIL COMPANY

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

Petitioner moves the Court to strike and dismiss the above-named defendants and BRIEF IN OPPOSITION OF RESPONDENTS NAMED BELOW filed herein on January 25, 1965 for the following reasons:

1. Defendants Humble Oil and Refining Company, Standard Oil Company and the Individual Defendants

named in Civil Action No. 63-H-509 now pending in the United States District Court For The Southern District of Texas *are not Respondents* in this Petition for Writ of Certiorari: and,

2. Honorable Joe M. Ingraham is the *only* Respondent in this cause;

3. Garrett R. Tucker, Jr., Cornelius O. Ryan and William J. Merrill *are not counsel* for Respondent Honorable Joe M. Ingraham but to the contrary are counsel for the defendants named, which defendants, are not parties Respondent in this particular proceeding and has no legal authority or right to file BRIEF IN OPPOSITION to Petitioner's Petition for Writ of Certiorari because under Rule 24 of the Supreme Court only Respondent, Honorable Joe M. Ingraham has the right to file opposition brief. The January 25, 1965 Opposition brief is filed by counsel for defendants named in the complaint, but no opposition brief has been timely filed by Respondent, Honorable Joe M. Ingraham.

For the foregoing reasons, Petitioner prays the Court to strike and dismiss brief in opposition filed herein on January 25, 1965 and dismiss the defendants who are not Respondents, to Petition for Writ of Certiorari filed herein on January 2, 1965 by Petitioner.

Respectfully submitted,

WILLIAM E. KINNEAR
Suite 419-21 Beaumont Savings Bldg.
Beaumont, Texas
Counsel for Petitioner

NO. 802

IN THE

Supreme Court of the United States

October Term, 1964

KINNEAR-WEED CORPORATION, *Petitioner*,

v.

HONORABLE JOE M. INGRAHAM, UNITED STATES DISTRICT JUDGE, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, *Respondent*.

PETITIONER'S REPLY BRIEF

Without waiving the foregoing motion, but still insisting upon the same, Petitioner presents its REPLY BRIEF to BRIEF IN OPPOSITION OF RESPONDENTS NAMED BELOW filed herein on January 25, 1965 by Defendants Humble Oil and Refining Company, Individual Defendants and Standard Oil Company, and, prays its Petition for Writ of Certiorari be granted.

ARGUMENT

I.

The petition for writ of certiorari filed herein by Petitioner on January 2, 1965 presents jurisdictional ques-

tions and the opposition brief thereto filed January 25, 1965 avoids the jurisdictional questions set out in the petition, which are the real issues involved. The argument and authorities cited in the opposition brief does not bear upon the jurisdictional questions presented. Writs of mandamus and prohibition is the proper remedy in view of the circumstances in this case as pointed out in the petition.

II.

The allegations set out in the AFFIDAVIT (R. 90) are fact statements supported by reasons and cannot be passed off as mere conclusions referred to in the opposition brief. When the court reviews the AFFIDAVIT (R. 90) it will find sufficient fact allegations and reasons therein to disqualify Honorable Joe M. Ingraham in Civil Action No. 63-H-509. For example, the affidavit particularly points out the fact allegations as follows:

(1) That the Complaint in Civil Action No. 63-H-509 was duly adopted under the local rules of the Southern District of Texas and legally filed under the honor sealed card system and assigned to the Court of Judge Allen B. Hannay;

(2) That Judge Joe M. Ingraham having knowledge that the case was duly and legally assigned to the Court of Judge Allen B. Hannay has illegally taken over said case and assumed jurisdiction over the parties and the subject matter of said Civil Action No. 63-H-509;

(3) That Judge Joe M. Ingraham did the defendants bidding requested in defendants letter dated August

6, 1964 (R. 15) knowing full well he had no jurisdiction in the case and on August 7, 1964 ordered (R. 17) pre-trial conference for September 8, 1964.

All of the fact allegations in the affidavit together with the reasons therein stated shows the purpose, design and intent of Judge Joe M. Ingraham to pirate and usurp the jurisdiction of Civil Action No. 63-H-509 from the jurisdiction of the Court of Judge Allen B. Hannay to whom the case was legally assigned under the local rules af The Southern District of Texas, as per Docket (R. 19).

III.

The defendants in the opposition brief conveniently stay away from any discussion of Petitioner's QUESTION PRESENTED III in the petition because Judge Ingraham in the *"worst of bad faith"* after knowledge that Circuit Judge Joseph C. Hutcheson, Jr. was disqualified in the Court of Appeals case No. 21,870 below *"failed and refused"*, although duty bound, to order the Defendants to come forward with him and request the Court of Appeals to set aside its fraudulent order (R. 24) of September 10, 1964, which positively shows that Judge Ingraham has personal bias and prejudice for said Defendants in Civil Action No. 63-H-509 and against Plaintiff your Petitioner herein.

IV.

The opposition brief of Defendants tries to establish that Civil Action No. 63-H-509 was transferred from the jurisdiction of the Court of Judge Hannay to the jurisdiction

of the Court of Judge Ingraham, but the opposition does not bring forward proof or order:

(1) To show that Judge Hannay disqualified himself;

(2) To show that all of the judges of the District Court transferred the case from the jurisdiction of the Court of Judge Hannay to the jurisdiction of the Court of Judge Ingraham;

But, to the contrary Petitioner brings forward proof by exhibiting the Docket (R. 19) in Civil Action No. 63-H-509 to definitely and positively show that no order of disqualification was made by Judge Hannay, or, that an order was made by all of the judges of said District Court transferring the case from the jurisdiction of Judge Hannay to the jurisdiction of the Court of Judge Ingraham.

And furthermore, the Docket (R. 19) "*has been tampered with and changed*" by lining out the name of Judge Hannay and inserting the name of Judge Ingraham without any written authority by order of all of the judges of said District Court as charged in SUPPLEMENTAL MOTION (R. 66) with attached AFFIDAVIT (R. 69) of William E. Kinnear, Counsel for Petitioner. This affidavit has not been denied or refuted in any way by Defendants or Respondent Judge Ingraham and therefore, this Court should hold that the Docket (R. 19) has been "*fraudulently changed and tampered with*" in an attempt to defeat Petitioner's legal right to a fair trial before a fair and impartial judge.

CONCLUSION

For the foregoing reasons herein and in the Petition the writ of certiorari should be granted. Oral argument is respectfully requested.

Respectfully submitted,

WILLIAM E. KINNEAR
Suite 419-21 Beaumont Savings Bldg.
Beaumont, Texas
Counsel for Petitioner

Dated: ~~January~~ February 2, 1965

CERTIFICATE OF COUNSEL

I, William E. Kinnear, Counsel for Kinnear-Weed Corporation, Petitioner in the above-entitled case, hereby certify that the above and foregoing, PETITIONER'S MOTION TO STRIKE AND DISMISS, etc., and, PETITIONER'S REPLY BRIEF are presented in good faith, and not for the purpose of delay, restricted to the grounds therein specified but in the opinion of counsel, well founded in law and proper to be filed herein.

WILLIAM E. KINNEAR

PROOF OF SERVICE

I, William E. Kinnear, Counsel for Kinnear-Weed Corporation, Petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 2nd day of ~~January~~ February 1965, I served copies of the foregoing PETITIONER'S MOTION TO STRIKE AND DISMISS, etc., and, PETITIONER'S REPLY BRIEF, by mailing the required copies in duly addressed envelopes by U. S. Mail, postage prepaid to Honorable Joe M. Ingraham, United States District Judge, United States District Court for the Southern District of Texas, United States Court House, Houston, Texas and served copies in the same manner to: Mr. Garrett R. Tucker, Jr., Esq., Baker, Botts, Shepherd & Coates, 1600 Esperson Bldg., Houston, Texas, and Mr. C. O. Ryan, Esq., Kelley, Ryan & Merrill, 666 Gulf Building Addition, Houston, Texas.

WILLIAM E. KINNEAR